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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/544,636 04/06/00 MESSENGER

D P-1701

EXAMINER

HM12/0313

CHARLES J PRESCOTT P A  
2033 WOOD STREET  
SUITE 115  
SARASOTA FL 34237

GEORGE K

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

03/13/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/544,636

Applicant(s)

MESSENGER, DONNA

Examiner

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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### DETAILED ACTION

Claims 1-4 are pending in this application.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler et al. (US 5,753,245).

Fowler et al. ('245) discloses a personal cleansing composition comprising insoluble micronized cleansing particles (abstract). The insoluble micronized particles of the prior art can be derived from a wide variety of materials, examples are aluminum oxide, polyethylene, polypropylene, etc. (col. 4, lines 32-59). The composition further contains surfactants, emollients, preservatives, and a diluent. The surfactant of the composition is selected from anionic, cationic, amphoteric, zwitterionic surfactants and mixtures thereof (col. 5, lines 28-35). Examples of surfactants that can be used are long chain alcohols such as cetyl alcohol (col. 6, lines 1-2) and glyceryl stearate (col. 10, lines 39-40). Examples of emollients chosen in the prior art can be cocoa butter, mineral oil, cetyl alcohol or mixtures thereof (col. 10, lines 45-67 bridging col. 1, lines 1-10). The diluent of the composition can be water (col. 13, lines 18-24). The composition further contains additional components such as chelating agents, fragrance components, preservatives, sunscreen agents and skin conditioning agents (col. 13,

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lines 26-67 bridging col. 14, lines 1-27). The prior art does not disclose specific components or that the powder is of about 99% purity, friable and a size of about 120 FEPA or decontaminated by radiation.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to chose specific components i.e. stearic acid, methyl- or propylparaben, triethanolamine, or trisodium EDTA which are known in cosmetic composition to produce a facial cleanser and conditioning composition. It would have been also obvious to select powder with characteristics that would provide effective abrasive qualities without damage to the to skin.

2. Claim 4 is allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

KMG

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a small flourish.

Shelley Dodson  
Primary Examiner  
Art Unit 1616